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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 SWORDS TO PLOWSHARES,
12 Plaintiff,
13 v.
14 ROBERT KEMP,
15 Defendant.

Case No.: 3:05-cv-01661-MJJ

**DEFENDANT ROBERT KEMP'S MOTION
FOR JUDGMENT ON THE PLEADINGS; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**
FRCP 12(c)

Date: Oct. 11, 2005
Time: 9:30 a.m.
Place: Courtroom 11, 19th Floor
Judge: Hon. Martin J. Jenkins

Comp. Filed: April 1, 2005
Comp. Removed: April 21, 2005
Trial Date: Nov. 28, 2005

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**NOTICE OF MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO
F.R.C.P. RULE 12(c)**

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 11, 2005, at 9:30 a.m. or as soon thereafter as the matter may be heard in the above-entitled court, the Honorable Martin J. Jenkins presiding, Courtroom 11 located in San Francisco at 450 Golden Gate Avenue, Defendant Robert Kemp will move the Court to dismiss all of the claims for relief of Plaintiff, Swords to Plowshares (“Landlord”) pursuant to Federal Rule of Civil Procedure Rule 12(c). The Motion will be made on the grounds that Landlord’s Complaint fails to plead facts sufficient to state a claim for relief.

This Motion will be based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, the oral argument of counsel, and the pleadings and papers filed in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF MOTION

As this Court held in the related case of *Swords to Plowshares v. Smith*, landlords who operate a federally subsidized housing complex must strictly comply with federal-eviction law. *Swords to Plowshares v. Smith*, 294 F. Supp.2d 1067, 1070-71 (N.D. Cal. 2002), citing 24 C.F.R. § 247.4; accord *Gersten Co. v. Deloney*, 212 Cal.App.3d 1119, 1125 (1989). To provide sufficient notice federal law “specifically dictates that ‘[a] landlord’s determination to terminate the tenancy shall be in writing and shall ... state the reasons for the landlord’s action with enough specificity so as to enable the tenant to prepare a defense....’” *Swords to Plowshares*, 294 F. Supp.2d at 1072, quoting 24 C.F.R. § 247.4(a).

Among other things, this specificity requires a Landlord’s notice to quit to specifically state: (1) the date of each incident alleged; (2) the time of each incident alleged; (3) the specific location of each incident alleged; and (4) the names of other persons involved and (5) the names of persons making complaints upon which the action is premised. *Swords to Plowshares*, 294 F. Supp.2d at 1072-73; *Pheasant Hill Estates Associates v. Milovich* (1996) 33 Pa. D. & C.4th 74, 78.

Defendant Robert Kemp moves here for judgment on the pleadings because Landlord's notice to quit is facially deficient due to its vagueness and failure to state the grounds for the termination of his tenancy with any specificity. The notice is completely devoid of the time, place, location, witnesses involved in any of the alleged events — and even the specific number of incidents — that constitute the grounds for termination. Landlord cannot cure this deficiency since it occurred in the notice. *Id.* at 1073. Thus, the Complaint against Mr. Kemp should be dismissed with prejudice.

II. MR. KEMP'S MOTION SHOULD BE GRANTED

A. LANDLORD'S NOTICE FELL FAR SHORT OF THE SPECIFICITY REQUIRED BY FEDERAL LAW

1. Federal Law Requires a Notice to Quit Specifically State the "Time, Date, Location and Person Upon which [Alleged] Violation[s] Occurred"

"[B]ecause federally subsidized landlords are essentially agents or partners of the government, due process requires that they have 'good cause' to evict." *Gersten*, 212 Cal.App.3d at 1126, citing *Joy v. Daniels*, 479 F.2d 1236, 1242-43 (4th Cir. 1973); *Appel v. Beyer*, 39 Cal.App.3d Supp. 7, 18-20 (1974). Landlord operates a federally subsidized housing complex. Landlord's April 1, 2005 Complaint "Comp.", Ex "2" (last page of exhibit). As such, it must comply with federal-eviction law. *Swords to Plowshares*, 294 F. Supp.2d at 1070-71, citing 24 C.F.R. § 247.4; *Gersten*, 212 Cal.App.3d at 1125.

This federal law "dictates that '[a] landlord's determination to terminate the tenancy shall be in writing and shall ... state the reasons for the landlord's action with enough specificity so as to enable the tenant to prepare a defense....'" *Id.* at 1072, quoting 24 C.F.R. § 247.4(a). This specificity rule is rooted in constitutional Due Process¹:

[T]he court must resolve the issue that of whether the termination procedures complied with applicable regulations in light of *the due process requirements* of *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 111, 25 L.Ed.2d 287 (1970). *See id.* at 314, 90 S.Ct. 1011. Pursuant to *Goldberg*, the court determined that notice must enable tenant to prepare a defense or rebuttal evident to introduce that the hearing appearance. (*Id.* (Citing (Emphasis added.))

¹ U.S. Const., amend V.

1 *Swords to Plowshares*, 294 F. Supp.2d at 1072 (emphasis added), citing *Goldberg v. Kelly*, 397
 2 U.S. 254; *Edgecomb v. Housing Auth. of the Town of Vernon*, 824 F. Supp. 312, 313 (D. Conn.
 3 1993).

4 This Court, in adopting the specificity standard set forth in *Milovich*, elaborated on what
 5 constituted defective notice: “Details concerning the ***time, date, location and person upon which***
 6 ***the violation occurred*** were not provided and, as such, the court found that ‘it is clearly
 7 unreasonable to expect a person to adequately defend themselves [sic] against such bare
 8 assertions.’” *Id.* at 1072-73, quoting *Milovich*, 33 Pa.D. & C. 4th at 78 (emphasis added). While
 9 the notice to quit in the 2002 *Swords to Plowshares* case provided more detail than the one in
 10 *Milovich*, the claims were still “deficient, in that they fail[ed] to identify the alleged victim or the
 11 time or date, such details being necessary for Defendant to be put on notice of the complaint of
 12 conduct so that he might begin preparing his defense.” *Id.* Thus, federal law required dismissal
 13 with prejudice.

14
 15 2. Landlord’s Notice to Quit Failed to State the Requisite “Time, Date,
 Location and Person Upon which [Alleged] Violation[s] Occurred”

16 The notice provided to Mr. Kemp contains much less specificity than the deficient notice
 17 provided in the previous *Swords to Plowshares* decision. Landlord’s notice to quit completely
 18 omits any information relating to the time, date, location, or persons involved in the altercations
 19 that are the grounds for this action against Mr. Kemp. Additionally, in describing four of the five
 20 grounds for Mr. Kemp’s dismissal, *Swords*’ invokes the term, “repeatedly,” creating the potential
 21 for a limitless number of the alleged incidents that require investigation in order for Mr. Kemp to
 22 mount a proper defense:

- 23 2. You have ***repeatedly*** engaged in verbal altercations with other residents.
- 24 3. You have ***repeatedly*** harassed, threatened and/or intimidated other residents.
- 25 4. You have ***repeatedly*** used derogatory, racial, and/or sexist language toward
 26 other residents.
- 27 5. You have ***repeatedly*** engaged in behavior causing noise and disturbing other
 28 residents’ quiet enjoyment.

1 Comp, Ex. “2” (emphasis added).

2 The other claim in the notice, relating to a physical altercation, fails to provide the time,
3 place, location, or other persons involved: “You engaged in physical violence against another
4 resident resulting in injuries.” *Id.* This notice falls far short of the rigid federal requirements
5 recognized by this Court in *Swords to Plowshares*.

6 3. Because Landlord’s Notice Was Deficient, Its Complaint Should Be
7 Dismissed with Prejudice

8 Failure to provide sufficient notice in a notice to quit is a fatal defect that cannot be cured
9 by a subsequent notice or complaint. *Swords to Plowshares*, 294 F. Supp.2d at 1073.
10 Accordingly, Landlord’s Complaint should be dismissed with prejudice. (*Id.*)

11 **B. DISMISSAL IS REQUIRED BECAUSE LANDLORD FAILED TO SERVE**
12 **NOTICE IN THE MANNER REQUIRED BY FEDERAL LAW**

13 As this Court found in *Swords to Plowshares*, federal law specifically requires dual notices
14 be served upon a tenant before he may be evicted from federal housings. *Swords to Plowshares*,
15 294 F. Supp.2d at 1070-71. Even the mere failure to plead such notice requires dismissal. *Id.* at
16 1071. Here, Landlord’s Complaint pleads that federally required dual notice was not provided.
17 Comp. ¶ 8.

18 In its Complaint, Landlord pleads that it provided Mr. Kemp with a *single* notice to quit.
19 Comp. ¶ 8. This notice does not meet the exacting federal requirements enacted by the
20 Department of Housing and Urban Development applying to an civil action seeking eviction of the
21 tenant.

22 The operative H.U.D. regulation requires *two* written notices to be served upon a section-8
23 tenant prior to eviction:

24 The notice provided for in paragraph (a) of this section shall be
25 accomplished by: (1) Sending a letter by first class mail, properly
26 stamped and addressed, to the tenant at his or her address at the
27 project, with a proper return address, *and* (2) serving a copy of the
28 notice on any adult person answering the door at the leased dwelling
unit, or if no adult responds, by placing the notice under or through
the door, if possible, or else by affixing the notice to the door.
*Service shall not be deemed effective until both notices provided
for herein have been accomplished. . . .*

1 24 C.F.R. § 247.4(b) (emphasis added).

2 Landlord's Complaint pleads the existence of a single notice. Comp. ¶ 8. Section 247.4,
 3 on its face, requires *two* notices be completed before eviction proceedings may be initiated.
 4 Moreover, even if a single notice was sufficient, Landlord's Complaint does not describe the
 5 manner in which that notice was presented. Thus, Landlord's Complaint is doubly defective,
 6 because it offers nothing to suggest that the notice met *either* one of the federal requirements much
 7 less both. As this Court found, failure to provide the required dual notice requires dismissal.
 8 *Swords to Plowshares*, 294 F. Supp.2d at 1070-71. Accordingly, the Court should grant
 9 Mr. Kemp's Motion.

10 III. CONCLUSION

11 As this Court found in *Swords to Plowshares*, federal law requires a landlord's notice to
 12 quit to specifically state "the time, date, location and person upon which the[alleged] violation[s]
 13 occurred." *Swords to Plowshares*, 294 F. Supp.2d at 1072-73. Here, Landlord's notice merely
 14 asserted "repeated[]" incidents warrant Mr. Kemp's eviction. This notice not only failed to
 15 comply with federal law, it was far more deficient that the notice provided in *Swords to*
 16 *Plowshares v. Smith*. Because such failure to provide the required notice cannot be cured, the
 17 Court should grant Mr. Kemp's Motion and dismiss Landlord's Complaint with prejudice.

18 Date: September 6, 2005

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